

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

In re Patent Application of

WIRTH, Jr. et al

Serial No. 10/696,587

Filed: October 30, 2003

Title: PUSH BLOCK HAVING A REMOVABLE HEEL

Atty Dkt. 3584-33

C# M#

TC/A.U.: 3724

Examiner: Nguyen, P.

Date: September 7, 2006



AF
2/2/06

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

☐ **Correspondence Address Indication Form Attached.**

☐ **NOTICE OF APPEAL**

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences
from the last decision of the Examiner twice/finally rejecting
applicant's claim(s).

\$500.00 (1401)/\$250.00 (2401) \$

☒ An Amended Appeal **BRIEF** is attached in the pending appeal of the
above-identified application

\$500.00 (1402)/\$250.00 (2402) \$ 250.00

☐ Credit for fees paid in prior appeal without decision on merits

-\$ ()

☐ A reply brief is attached.

(no fee)

☐ Petition is hereby made to extend the current due date so as to cover the filing date of this
paper and attachment(s)

One Month Extension \$120.00 (1251)/\$60.00 (2251)

Two Month Extensions \$450.00 (1252)/\$225.00 (2252)

Three Month Extensions \$1020.00 (1253)/\$510.00 (2253)

Four Month Extensions \$1590.00 (1254)/\$795.00 (2254) \$

☐ "Small entity" statement attached.

Less Appeal Brief Fee previously paid on January 19, 2006

-\$ (250.00)

TOTAL FEE ENCLOSED \$ 0.00

Any future submission requiring an extension of time is hereby stated to include a petition for such time extension.
The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or
asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this
firm) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

901 North Glebe Road, 11th Floor
Arlington, Virginia 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100
MNL:slj

NIXON & VANDERHYTE P.C.

By Atty: Michelle N. Lester, Reg. No. 32,381

Signature: 



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of

WIRTH, Jr. et al

Serial No. 10/696,587

Filed: October 30, 2003

For: PUSH BLOCK HAVING RETRACTABLE HEEL

Atty. Ref.: 3584-33

TC/A.U.: 3724

Examiner: Nguyen, P.

September 7, 2006

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Sir:

Responsive to the Notification of Non-Compliant Appeal Brief dated August 31, 2006, attached is amended Appeal Brief which now also maps independent claim 5 to the specification and which corrects the Claims Appendix.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:

Michelle N. Lester

Reg. No. 32,331

MNL:slj

901 North Glebe Road, 11th Floor

Arlington, VA 22203-1808

Telephone: (703) 816-4000

Facsimile: (703) 816-4100



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of

WIRTH, Jr. et al

Atty. Ref.: 3584-33

Serial No. 10/696,587

TC/A.U.: 3724

Filed: October 30, 2003

Examiner: Nguyen, P.

For: PUSH BLOCK HAVING RETRACTABLE HEEL

September 7, 2006

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDED APPEAL BRIEF

Sir:

Applicants submit herewith their Amended Brief on Appeal pursuant to 37 CFR
§41.37.

TABLE OF CONTENTS

(I)	REAL PARTY IN INTEREST	3
(II)	RELATED APPEALS AND INTERFERENCES	4
(III)	STATUS OF CLAIMS	5
(IV)	STATUS OF AMENDMENTS	6
(V)	SUMMARY OF CLAIMED SUBJECT MATTER	7
(VI)	GROUND OF REJECTION TO BE REVIEWED ON APPEAL	9
(VII)	ARGUMENT	10
(VIII)	CLAIMS APPENDIX	18
(IX)	EVIDENCE APPENDIX	21
(X)	RELATED PROCEEDINGS APPENDIX	22

(I) REAL PARTY IN INTEREST

The real party in interest is the assignee, WOODWORKER'S SUPPLY INC., a corporation of the State of Wyoming.

(II) RELATED APPEALS AND INTERFERENCES

On information and belief there are no other prior or pending appeals, interferences, or judicial proceedings (past or present), known to appellant, the appellant's legal representative, or assignee, which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

(III) STATUS OF CLAIMS

Claims 1-18 remain pending. Claims 13 and 14 have been allowed. Claims 7-10, 17 and 18 have been objected to as depending from a rejected claim but would be allowable if rewritten in independent form. Claims 1-6, 11-12, and 15-16 are rejected (The Examiner included claims 13 and 14 in the statement of rejection over the prior art. However, the Examiner reports on the PTOL-326 and in paragraph 6 of the Official Action that claims 13 and 14 are allowed. Therefore, the inclusion of claims 13 and 14 in the stated rejection is understood to be a typographical error). The rejection of claims 1-6, 11-12, and 15-16 is being appealed. A current listing of claims involved in the Appeal is presented in the Claims Appendix of this Brief.

WIRTH, Jr. et al
Serial No. 10/696,587
Amended Appeal Brief
September 7, 2006

(IV) STATUS OF AMENDMENTS

No amendment was filed subsequent to the final rejection of April 7, 2006.

(V) SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates to push sticks and push blocks and, more particularly, to a push block having a retractable heel for securely engaging and advancing a workpiece over or through woodworking equipment.

In woodworking operations involving equipment such as table saws, routers, planers, jointers, and the like, a push stick or push block is typically used to advance the workpiece through the equipment and past the cutting tool, to reduce the risk of accidental injuries to the fingers and hands. A push block also helps to control the workpiece, to maintain dimensional tolerances.

The invention provides a push block that can be selectively used for flat face engagement or end edge (stepped) engagement with the workpiece. More specifically, the invention provides a push block 10 that includes a heel 30 that has a stored position (Figure 7) and an operative position (Figure 8) to allow the respective modes of use of the push block. Accordingly, when the push block 10 is disposed face down on a flat workpiece 32 with the heel in its stored position, the push block can effectively perform the functions of a flat face push block. When, on the other hand, the heel is disposed in its operative position and the push block is disposed so that the heel can engage an end edge of the workpiece 32, the push block can effectively perform the functions of a fixed heel push block (paragraph [0026]; spec. page 7, lines 6-17).

Thus and more specifically, as defined in claim 1, the invention provides a push block comprising a main body 12 having a proximal end 22, a distal end 20, a longitudinal axis, and a first, generally flat working surface 16,18 for engaging a top surface of a workpiece; a handle component 14 extending from said main body whereby when said first working surface is disposed in parallel facing relation to the top surface of the workpiece, said handle component is disposed predominantly vertically above said main body (paragraphs [0022] and [0023], spec. page 5, line 15 – page 6,

line 9); and a heel component 30 extending from said main body so as to have a first, operative position, wherein said heel projects vertically below a first plane of said first working surface, and a second, stored position wherein a bottom edge of said heel is disposed in or vertically above said first plane (paragraph [0026], spec page 7, lines 6-17; and paragraph [0029], spec. page 8, lines 17-31), said heel defining a second working surface 38 disposed in a second plane defined at an angle with respect to said first working surface 16,18, for selectively engaging a trailing end surface of the workpiece for displacing the workpiece (paragraph [0030], spec. page 9, lines 1-14; Figures 1, 3 and 8).

The invention also provides, as defined in claim 5, a pushblock device comprising a main 12 body having a proximal end 22, a distal end 20, a longitudinal axis, and a first, generally flat working surface 16,18; a handle component 14 extending from said main body whereby when said first working surface is disposed in parallel facing relation to a top surface of a workpiece, said handle component is disposed predominantly vertically above said main body (paragraphs [0022] and [0023], spec. page 5, line 15 – page 6, line 9); a heel component 30 extending from said main body so as to have a first, operative position, wherein said heel projects vertically below a first plane of said first working surface, and a second, stored position wherein a bottom edge of said heel is disposed in or vertically above said first plane [paragraph [0026], spec. page 7, lines 6-17; and paragraph [0029], spec. page 8, lines 17-31), said heel defining a second working surface 38 disposed in a second plane defined at an angle with respect to said first working surface (paragraph [0030], spec. page 9, lines 1-14; Figures 1, 3 and 8); and at least one slip resistant pad 64,66,68 secured to at least one of said first and second working surfaces 16,18,38 (paragraph [0032], spec. page 10, lines 15-22; Figures 4 and 6).

(VI) GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-4, 11-12 and 15 stand rejected under 35 USC §102(e) as being anticipated by Sizemore.¹

Claims 5 and 6 stand rejected under 35 USC §103(a) as being unpatentable over Sizemore in view of Misevich et al.

Claim 16 stands rejected under 35 USC §103(a) as being unpatentable over Sizemore in view of Hammerschmidt.

¹ The Examiner's statement of rejection in paragraph 3 of the Official Action also included claims 13 and 14. However, the PTOL-326 and paragraph 6 of the Official Action advised that claims 13 and 14 are allowed. Moreover, in the detailed statement of the Examiner's rejection, claims 13 and 14 are not mentioned. It is therefore understood that the inclusion of claims 13 and 14 in the statement of rejection was an inadvertent typographical error.

(VII) ARGUMENT

A. Claims 1-4, 11-12 and 15 are patentable as not having been anticipated by Sizemore.

As noted above, claims 1-4, 11-12 and 15 stand rejected as allegedly anticipated by Sizemore. Applicant respectfully traverses this rejection.

Anticipation under Section 102 of the Patent Act requires that a prior art reference disclose every claim element of the claimed invention. See, e.g., *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1574 (Fed. Cir. 1986). While other references may be used to interpret an allegedly anticipating reference, anticipation must be found in a single reference. See, e.g., *Studiengesellschaft Kohle, G.m.b.H. v. Dart Indus., Inc.*, 726 F.2d 724, 726-27 (Fed. Cir. 1984). The absence of any element of the claim from the cited reference negates anticipation. See, e.g., *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715 (Fed. Cir. 1984). Anticipation is not shown even if the differences between the claims and the prior art reference are insubstantial and the missing elements could be supplied by the knowledge of one skilled in the art. See, e.g., *Structural Rubber Prods.*, 749 F.2d at 716-17.

Claim 1 is directed to a push block comprising a main body having a first working surface, a handle and a retractable heel defining a second working surface.

Sizemore discloses a shoe having retractable shock absorbers. As such Sizemore clearly has nothing to do with a push block device for displacing a workpiece relative to woodworking equipment as recited in applicant's independent claim 1. The Examiner says that Sizemore teaches a shoe that is "capable of being used as a push block device". It is respectfully submitted, however, that such a "capability" is not taught, suggested or advocated by Sizemore.

It is also respectfully submitted that the shoe upper of Sizemore is not a handle component and would not be understood by the skilled artisan to constitute a handle. A "handle" is understood to be a part for holding; it is part of a thing which is held [by hand]. The skilled artisan would understand that a shoe, such as the Sizemore shoe, is not designed to have nor intended to have a "handle". Therefore, the Examiner's characterization of the Sizemore shoe as including a main body and a handle is inconsistent with the customary meaning of the word "handle" and inconsistent with the known function of a shoe upper. Thus, the Sizemore shoe upper would not be construed by the skilled artisan to constitute a handle (as recited in claim 1) so as to properly provide the basis for a §102(e) rejection.

It is further respectfully submitted that of the shock absorbers of Sizemore, even if individually or collectively referred to as a "heel", are not taught as nor would they be understood to include a second working surface as claimed. In this regard, Sizemore teaches only the bottom surface of his shock absorbers as intended to make contact with anything and that "working surface" is parallel to the bottom surface of the sole of the shoe. Any engagement of a side surface of the shock absorbers would skew the shock absorbers relative to the receptacles 8 and consequently cause jamming of the shock absorbers. Thus, there is no teaching of a second working surface disposed in a plane defined at an angle with respect to the first working surface (of the main body).

Furthermore, as noted above, claim 1 specifically recites that the second working surface be for selectively engaging a trailing surface of a workpiece. It is clear from the structure and orientation of the shock absorbers in Sizemore that they are intended to be engaged only at their bottom surface and any engagement of a peripheral surface of the shock absorbers would evidently impair their ability to function as disclosed.

Thus, not only would the skilled artisan never consider a shoe to be a suitable for a push block, but he would not consider Sizemore to teach a handle, or to teach a

retractable structure defining a second working surface at an angle to a (first) working surface of the main body to which it is mounted. Therefore, the Examiner's anticipatory rejection of claim 1 and claims 2-4 dependent thereon is submitted to be without merit.

Claims 11 and 12 respectively provide a retention plate for securing the retractable heel to the main body and a slip resistant pad over molded to the plate. With regard to claim 11, the Examiner characterizes the plate on top of element 3 as a retention plate. That protective plate, referred to in Sizemore's disclosure as protective section 14 and/or strong wall 12, is provided to protect the wearer from discomfort from the spring pressure. There is no disclosure whatsoever of protective section 14 (not labeled in the drawings) and/or wall 12 as provided "for securing the retractable" component (e.g., cleats 9) to the "main body" 3, as required by claims 11 and 12. In fact it appears that the only thing keeping the cleats from falling out of the "main body 3" is the fact that there are cooperative edges 10 and 11. Even if element 10 is considered to be a "retention plate", with reference to claim 12, there is no teaching of overmolding a slip resistant pad to the "plate 10". In this regard, the Examiner asserts that element 3 is a slip resistant pad. However, because the shoe upper has been characterized by the Examiner as a handle, element 3 is the "main body". Therefore, element 3 (which is the "main body") can not be properly characterized as also reading on a slip resistant pad overmolded to a plate allegedly retaining the cleat with respect to the main body. Thus, the Examiner has not properly read Sizemore on claim 12 either.

With regard to claim 15, the Examiner has failed to fully consider all limitations of claim 15 in labeling the Sizemore shoe. Claim 15 not only requires leading and trailing halves but further provides that the second working surface extends widthwise of the main body. No cleat of Sizemore extends widthwise of the main body since they are provided as discrete circular components. Thus, no working surface is provided that extends widthwise of the main body and faces the leading half of the main body. Each

of the cleats has only a single, downwardly facing working surface. The other "surface" of the cleat is a peripherally extending surface that is not disposed as nor used as a working surface, is not adapted for surface engagement with any other component, and does not extend widthwise of the main body.

For all the reasons advanced above it is respectfully submitted that claims 1-4, 11-12 and 15 are not anticipated by Sizemore.

B. Claims 5 and 6 are patentable as having not been obvious from Sizemore in view of Misevich et al.

Claim 5 is directed to a push block device for displacing a workpiece relative to woodworking equipment that comprises *inter alia* a main body having a first generally flat working surface and a heel component extending from the main body so as to have an operative position wherein it projects below the plane of the first working surface and a storage position disposed in or vertically above the plane of the first working surface, the heel defining a second working surface disposed in a plane defined at an angle with respect to the first working surface. Claim 5 further provides that there is at least one slip resistant pad secured to the first and/or second working surfaces.

As noted above, Sizemore discloses footwear having shock absorbers that take on the appearance and location of traditional shoe cleats. Sizemore is not disclosed as nor would the skilled artisan consider Sizemore to be suitable as a push block device. Moreover, Sizemore discloses working surface(s) in substantially only a single plane or in parallel planes. In this regard, only the bottom surface of the sole of the Sizemore shoe and/or the bottom surface of the spring cleats of the shoe are intended to contact any surface, such as the ground. Furthermore, as apparently recognized by the Examiner, Sizemore does not disclose or in any way suggest the subject matter of applicant's claims 5 and 6, to wit a slip resistant pad is secured to at least one of first and second working surfaces (that are disposed at an angle to one another). Sizemore also fails to

teach or suggest such a slip resistant pad overmolded to the respective working surface.

The Examiner seeks to overcome the deficiencies of Sizemore by relying upon the secondary reference to Misevich. On careful consideration, it is understood that Misevich relates to an insole having a slip resistant surface. Nevertheless, the Examiner has argued that in view of the Misevich insole, it would be "obvious" to provide a slip resistant surface on the bottom (outer) sole of the Sizemore shoe. It is respectfully submitted that the Examiner's suggestion that it would have been "obvious" to modify the bottom sole of the footwear disclosed in Sizemore in view of an insole structure is completely without merit. Indeed, in the absence of applicant's disclosure there is no teaching or suggestion whatsoever in the prior art of record that would motivate the skilled artisan to look to a characteristic of an insole in deciding whether and how to modify the bottom of the Sizemore footwear. The structure and function of an insole quite frankly have nothing to do with desirable functions and structures of the bottom sole of a shoe. It is therefore respectfully submitted that the Examiner's prior art combination is improperly motivated by his hindsight knowledge of applicant's claimed invention and is not a combination that would be made without knowledge of applicant's claims.

In view of the foregoing, it is respectfully submitted that the Examiner's prior art combination is improper, and that claims 5 and 6 are patentable over Sizemore and/or Misevich.

C. Claim 16 is patentable as not having been obvious from Sizemore in view of Hammerschmidt.

Claim 16 provides that the pushblock main body and handle are molded from a plastic material. In column 2, lines 49-51, Sizemore discloses that the shoe upper 2 and the sole 3 (handle and main body according to the Examiner's characterization of

Sizemore) may be made from any number of conventional materials such as leather, rubber and the like for comfort and style. Clearly, Sizemore does not teach or suggest that the shoe upper and the shoe sole could or should be molded from plastic. Recognizing this deficiency of Sizemore, the Examiner cites the secondary reference to Hammerschmidt.

Hammerschmidt discloses a plastic clog with ventilation openings. While Hammerschmidt demonstrates that plastic clogs are known, this does not *ipso facto* mean that it would have been obvious to mold the Sizemore shoe from a plastic material. In this regard, the Examiner has failed to cite any teaching in the prior art that molding a shoe upper and shoe sole from plastic would be obvious choice for a shoe of the type that Sizemore discloses. Indeed, it is respectfully submitted that molding Sizemore's shoe upper and sole from plastic would not in fact have been obvious. Rather, it is respectfully submitted that the skilled artisan considering Sizemore and Hammerschmidt without the benefit of applicant's disclosure would form Sizemore from conventional footwear materials such as leather, canvas or the like, but would not mold the shoe upper from plastic. Hammerschmidt would not motivate the skilled artisan to mold Sizemore's shoe from plastic because Hammerschmidt's teaching is relevant only to a clog.

It is therefore respectfully submitted that the fact that the Examiner has identified a plastic clog in the prior art does not provide the proper motivation or teaching to mold Sizemore from plastic.

It is further respectfully submitted that even if Sizemore were made from plastic, the invention claimed would still not be anticipated or obvious because Sizemore does not include a handle as required by applicant's independent claim and does not include first and second working surfaces as claimed.

For all the reasons advanced above, it is respectfully submitted that claim 16 is patentable as not having been obvious from Sizemore taken alone or in combination with Hammerschmidt.

WIRTH, Jr. et al
Serial No. 10/696,587
Amended Appeal Brief
September 7, 2006

CONCLUSION

For all the reasons advanced above, reversal of the Examiner's Rejections and allowance of all pending claims is solicited.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 

Michelle N. Lester

Reg. No. 32,331

MNL:slj
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100

(VIII) CLAIMS APPENDIX

1. (Previously presented) A push block device for displacing a workpiece relative to woodworking equipment, comprising:

a main body having a proximal end, a distal end, a longitudinal axis, and a first, generally flat working surface for engaging a top surface of a workpiece;

a handle component extending from said main body whereby when said first working surface is disposed in parallel facing relation to the top surface of the workpiece, said handle component is disposed predominantly vertically above said main body; and

a heel component extending from said main body so as to have a first, operative position, wherein said heel projects vertically below a first plane of said first working surface, and a second, stored position wherein a bottom edge of said heel is disposed in or vertically above said first plane, said heel defining a second working surface disposed in a second plane defined at an angle with respect to said first working surface, for selectively engaging a trailing end surface of the workpiece for displacing the workpiece.

2. (Original) A push block device according to claim 1, wherein the heel projects resiliently downwardly from said first plane so that when upward pressure is applied to said heel in a direction generally perpendicular to said first plane, said heel is displaced vertically with respect to said first plane.

3. (Original) A push block device according to claim 1, wherein the heel is separately formed and secured to the main body.

4. (Original) A push block device according to claim 1, wherein a heel receiving compartment is defined in said main body so that when said heel is deflected vertically

with respect to said first working surface, said heel is received substantially entirely within said main body.

5. (Previously presented) A push block device for displacing a workpiece relative to woodworking equipment, comprising:

a main body having a proximal end, a distal end, a longitudinal axis, and a first, generally flat working surface;

a handle component extending from said main body whereby when said first working surface is disposed in parallel facing relation to a top surface of a workpiece, said handle component is disposed predominantly vertically above said main body;

a heel component extending from said main body so as to have a first, operative position, wherein said heel projects vertically below a first plane of said first working surface, and a second, stored position wherein a bottom edge of said heel is disposed in or vertically above said first plane, said heel defining a second working surface disposed in a second plane defined at an angle with respect to said first working surface; and

at least one slip resistant pad secured to at least one of said first and second working surfaces.

6. (Original) A push block device according to claim 5, wherein said at least one pad is over molded to said at least one working surface.

11. (Original) A push block device according to claim 1, further comprising a retention plate for securing said retractable heel to said main body.

12. (Original) A push block device according to claim 11, further comprising at least one slip resistant pad over molded to said plate.

15. (Previously presented) A push block device according to claim 1, wherein said main body is comprised of leading and trailing halves, wherein said heel portion is defined in said trailing half and wherein said second working surface generally faces in a direction of said leading half and extends widthwise of said main body.

16. (Previously presented) A push block device according to claim 1, wherein said push block main body and handle are molded from a plastic material.

WIRTH, Jr. et al
Serial No. 10/696,587
Amended Appeal Brief
September 7, 2006

(IX) EVIDENCE APPENDIX

No evidence has been submitted during prosecution of this application pursuant to 37 CFR §§1.130, 1.131, 1.132.

WIRTH, Jr. et al
Serial No. 10/696,587
Amended Appeal Brief
September 7, 2006

(X) RELATED PROCEEDINGS APPENDIX

(NONE)